

CHAPTER 15

TERMINATIONS AND SUSPENSIONS OF INVESTIGATIONS

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LIST OF ACRONYMS & ABBREVIATIONS

CFR	CODE OF FEDERAL REGULATIONS
CEP	CONSTRUCTED EXPORT PRICE
DOC	DEPARTMENT OF COMMERCE
EP	EXPORT PRICE
FR	FEDERAL REGISTER
GATT	GENERAL AGREEMENT ON TARIFFS AND TRADE
ITC	INTERNATIONAL TRADE COMMISSION
SAA	STATEMENT OF ADMINISTRATIVE ACTION
ANTIDUMPING AGREEMENT	AGREEMENT ON INTERPRETATION OF ARTICLE VI OF THE GATT
THE ACT	THE TARIFF ACT OF 1930, AS AMENDED

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References:

- The Tariff Act of 1930, as amended (the Act)
  - Section 734 - **termination** or suspension of investigations
  - Section 782(h)(1) - termination for lack of interest
- Department of Commerce (DOC) Regulations
  - 19 CFR 351.207 - termination of investigations
  - 19 CFR 351.208 - suspension of investigations
  - 19 CFR 351.209 - violation of suspension agreements
- SAA
  - Section C.6. - suspension agreements
- Antidumping Agreement
  - Article 8 - price undertakings
  - Article 11.5 - duration of price undertakings

**I. TERMINATIONS OF INVESTIGATIONS**

“Termination” is a term that refers to the end of an antidumping duty proceeding in which an order has not yet been issued. The Act establishes a variety of mechanisms by which an investigation may be terminated.

**A. Withdrawals of Petitions**

The DOC may terminate an investigation under section 734(a)(1)(A) (withdrawal of petition by petitioner) or section 734(k) (self-initiated investigation) of the Act and 19 CFR 351.207(b), provided that the DOC concludes that termination is in the public interest.

The DOC may also terminate an investigation where withdrawal of a petition is based on acceptance of a quantitative restriction agreement. A quantitative restriction agreement is an understanding or other kind of agreement to limit the volume of imports of the **subject merchandise** into the United States. If a termination is based on acceptance of a quantitative restriction agreement Commerce will apply the provisions of section

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734(a)(2) of the Act regarding public interest and consultations with consuming industries and producers and workers. The public interest provisions of section 734(a)(2) include the following:

1. Whether, based on the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement will have a greater adverse impact on United States consumers than the imposition of antidumping duties;
2. the relative impact on the international economic interests of the United States; and
3. the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in the industry.

For quantitative restriction agreements, the DOC, before terminating an investigation, to the extent possible, shall consult with the potentially affected consuming industries and the potentially affected producers and workers in the domestic industry, including those not involved in the investigation.

**B. Lack of Interest Terminations**

The DOC may terminate an investigation based upon lack of interest in accordance with section 782(h)(1) of the Act and 19 CFR 351.207(c).

**C. Negative Determinations**

Under section 735(c)(2) of the Act, the DOC and the International Trade Commission (ITC) shall terminate an investigation upon publication of a final negative determination.

In accordance with 19 CFR 351.207(d), an investigation shall also be terminated if the ITC publishes a preliminary negative determination.

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### **D. Limitation on ITC Terminations**

In accordance with section 734(a)(3) of the Act, the ITC may not terminate an investigation based on a withdrawn petition before the DOC's preliminary determination.

### **E. End of Suspension of Liquidation**

When an investigation terminates, if the DOC previously ordered suspension of liquidation, the DOC will order the end of the suspension of liquidation on the date of publication of the notice of termination, and will instruct U.S. Customs to release any cash deposits or bonds. (See 19 CFR 351.207(e))

## **II. SUSPENSIONS OF INVESTIGATIONS**

In a suspension agreement, the foreign exporters and producers or the foreign government agree to modify their behavior so as to eliminate **dumping** or the injury caused thereby or, in a NME, they agree to a quantity restriction on imports. If the DOC accepts a suspension agreement, it will “suspend” the investigation and thereafter will monitor compliance with the agreement in accordance with 19 CFR 351.208(a). The types of suspension agreements can be found in section 734 of the statute. Definitions, procedures, and special rules can be found in the regulations under 19 CFR 351.208.

As stated in the SAA at 874, “Although existing law provides for the suspension of antidumping and countervailing duty investigations pursuant to the conclusion of suspension agreements, early experience with such agreements demonstrated that they were not always effective in providing relief from unfairly traded imports. Therefore, longstanding Commerce policy has been to treat such agreements as the exception rather than the rule.”

In accordance with section 734(d) of the Act, the DOC may suspend an investigation if satisfied that such a suspension is in the public interest and effective monitoring of the agreement is practicable. In cases where the DOC does not accept an agreement, it shall, where practicable, provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. The DOC may suspend an investigation at any time before the

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final determination by accepting an agreement with market economy foreign exporters or producers that account for “substantially all” of the subject merchandise (see Section II, part C.3. of this chapter for a definition of “substantially all”).

### **A. Types of Agreements**

There are four scenarios under which the DOC may suspend an investigation:

#### 1. Cessation of Exports

In accordance with section 734(b)(1) of the Act, the exporter(s) who are signatories to the agreement agree to cease all exports within six months (180 days) after the date on which the investigation is suspended. Exporters must agree not to increase the quantity of exports during the interim period set forth in the agreement. It must not exceed the quantity exported during a period of comparable duration considered representative by the DOC. For an example of a suspension agreement based on an agreement to cease exports, see Certain Electric Motors from Japan: Antidumping Final Determination of Sales of Large Motors at Less Than Fair Value and Suspension of Investigation for Small Motors, 45 FR 73723 (November 6, 1980).

#### 2. Elimination of Sales At Less Than Fair Value

In accordance with section 734(b)(2) of the Act, the exporter(s) must agree to revise its prices to completely eliminate any amount by which the **normal value** of the merchandise which is the subject of the agreement exceeds the export price (EP) or **constructed export price** (CEP) of that merchandise. For an example of a suspension agreement based on an elimination of sales at less than fair value, see Suspension of Antidumping Duty Investigation: Cement from Venezuela, 57 FR 6706 (February 27, 1992).

#### 3. Elimination of Injurious Effect

In accordance with section 734(c) of the Act, if the DOC determines that extraordinary circumstances are present, it may suspend an investigation

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based on an agreement by exporters and producers that account for substantially all of the subject merchandise to eliminate injurious effect by revising prices if it is satisfied that the agreement will completely eliminate injurious effect and if:

- a. The suppression or undercutting of price levels of domestic products by imports of the subject merchandise will be prevented; and
- b. for each entry of each exporter, the dumping margin will not exceed 15 percent of the weighted-average dumping margin for that exporter during the investigation.

For an example of a suspension agreement based on elimination of injurious effect, see Suspension of Antidumping Duty Investigation: Potassium Chloride from Canada, 53 FR 1393 (January 19, 1988).

#### 4. Special Rule for NME Suspension Agreements

In accordance with section 734(l) of the Act, the DOC may suspend an investigation based on an agreement with a NME country to restrict the volume of imports into the United States if the DOC determines that:

- a. the agreement is in the public interest;
- b. monitoring of the agreement is practicable; and
- c. the agreement will prevent the suppression or undercutting of the price levels of domestic products by imports of the subject merchandise.

For an example of a suspension agreement based on a restricted volume of imports, see Suspension of Antidumping Duty Investigation: Silicomanganese from Ukraine, 59 FR 60951 (November 29, 1994).

TERMINATIONS AND SUSPENSIONS OF INVESTIGATIONS**B. Definitions**

## 1. Public Interest

In order to determine whether a suspension agreement is in the public interest, the DOC considers the views of all interested parties, an industrial user of the subject merchandise or a representative of a consumer organization, and U.S. government agencies (see 19 CFR 351.208(f) and section 734(a) of the Act for information on public interest factors that are considered). The 734(a) public interest factors only apply to quantitative restriction agreements under the same section of the Act. Public interest considerations for other types of suspension agreements are in section 734(d) of the Act. In the Final Determination of Sales at Less Than Fair Value: Calcined Bauxite Proppants from Australia, 52 FR 6311 (February 9, 1989), the DOC determined that, since the only respondent consistently refused to answer the DOC's questionnaire and the proposed agreement was not binding on future exporters of the subject merchandise, a suspension agreement would not serve the public interest.

## 2. Monitoring

The DOC will not accept an agreement unless effective monitoring of the agreement is practicable (see section 734(d)(2) of the Act). In monitoring an agreement under section 734(c) or 734(l) to eliminate injurious effect or an NME agreement, the DOC is not obliged to ascertain on a continuing basis the prices in the United States of the subject merchandise or of domestic like products.

## 3. Substantially All

Exporters which account for substantially all of the merchandise means exporters and producers that have accounted for not less than 85 percent by value or volume of the imports of the subject merchandise during the **period of investigation** or another period that the DOC considers representative (see 19 CFR 351.208(c)).

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## 4. Extraordinary Circumstances

Circumstances in which the suspension will be more beneficial to domestic industry than continuation of the investigation, and the investigation is complex.

## 5. Complex

Means a large number of transactions to be investigated or adjustments to be considered, the issues raised are novel, or the number of firms involved is large.

**C. Pre-Acceptance Procedures**

1. In accordance with 19 CFR 351.208(f)(1)(i), the exporters and producers of the subject merchandise, or the government in an NME investigation, shall submit a proposed suspension agreement to the DOC within 15 days after the date of the issuance of the preliminary determination; and
2. In accordance with 19 CFR 351.208(f)(2) and (3), the DOC will:
  - a. notify all parties to the proceeding of the proposed suspension and provide to petitioner a copy of the preliminarily accepted agreement within 30 days after the date of the issuance of the preliminary determination;
  - b. consult with petitioner concerning the proposed suspension agreement; and
  - c. provide all interested parties, an industrial user, a representative consumer organization, and U.S. government agencies an opportunity to submit written argument and factual information concerning the proposed suspension agreement within 50 days after the date of the issuance of preliminary determination.

TERMINATIONS AND SUSPENSIONS OF INVESTIGATIONS**D. Acceptances of Agreements**

In accordance with 19 CFR 351.208 (g) the DOC may accept an agreement to suspend an investigation within 60 days after the issuance of a preliminary determination. In accepting a suspension agreement the DOC may rely on any factual information or legal conclusions reached in or after the affirmative preliminary determination.

If the DOC determines to suspend an investigation upon acceptance of a suspension agreement, the DOC shall 1) suspend the investigation, 2) publish notice of suspension of the investigation including the text of the suspension agreement (which shall take effect on the day such notice is published in the Federal Register (FR)), and 3) issue an affirmative preliminary determination under section 733(b) with regard to the subject merchandise unless one has already been issued. The ITC will suspend any investigation it is conducting.

**E. Liquidation of Entries**

1. Suspension Agreements to Eliminate Completely Sales at Less Than Fair Value or Cease Exports

In accordance with section 734(f)(2)(A) of the Act, the DOC will not order the suspension of liquidation of entries of the subject merchandise normally required under 733(d)(2). Any previously ordered suspension of liquidation will end on the effective date of the suspension of the investigation and the DOC will instruct U.S. Customs to refund any cash deposit or release any bond or other security deposited.

2. Suspension Agreements Eliminating Injurious Effect

In accordance with section 734(f)(2)(B) of the Act, the DOC shall suspend liquidation of entries of the subject merchandise under section 733(d)(2). If, however, the liquidation of entries of subject merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, pending a review of the

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suspension agreement, but the security required under section 733(d)(1)(B) may be adjusted to reflect the effect of the suspension agreement.

**F. Continuations of Investigations**

In accordance with section 734(g) and 19 CFR 351.208(h), within 20 days after the date of publication of the notice of suspension of an investigation an exporter or exporters accounting for a significant portion of exports to the United States of the subject merchandise, or an interested party as defined in section 771(9)(C)-(G) of the Act (manufacturers, producers, wholesalers, unions or a group of workers engaged in the manufacture of the subject merchandise, trade associations, and processors and/or producers of the subject merchandise) may request in writing that the DOC continue the investigation. The written request must be filed simultaneously with the ITC and the requester must so certify in submitting a request to the DOC. The DOC and the ITC shall continue the investigation upon receipt of a properly filed request for continuation of investigation.

Depending on the final determinations by the DOC and ITC, one of the following scenarios will occur:

1. Affirmative Final Determinations

If the DOC and the ITC make affirmative final determinations in an investigation which has been continued, the suspension agreement will remain in effect.

2. Negative Final Determinations

If either the DOC or the ITC make negative final determinations in an investigation which has been continued, the suspension agreement will have no force or effect. The investigation will be terminated at this point.

TERMINATIONS AND SUSPENSIONS OF INVESTIGATIONS**G. Violations of the Agreements**

In accordance with 19 CFR 351.209 (e), the DOC defines “violation” as noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory, except, at the discretion of the DOC, an act or omission may be deemed inadvertent or inconsequential by the DOC.

**1. Immediate Determinations**

If the DOC determines that a signatory has violated the suspension agreement, the DOC, without providing interested parties an opportunity to comment, will order the suspension of liquidation of all entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of the following: (1) 90 days before the date of publication of the notice of cancellation of suspension agreement or (2) the date of the first entry, or withdrawal from warehouse, for consumption of the merchandise, the sale or export of which was in violation of the suspension agreement (see 19 CFR 351.209(b)(1)).

- a. **Completed Investigations:** If the investigation is completed under section 734(g) (an exporter or an interested party requested the continuation of the investigation), and the ITC makes an affirmative injury determination. The DOC will issue an antidumping duty order and, for all entries subject to suspension of liquidation, instruct Customs to require a cash deposit at the rates determined in the affirmative final determination (see 19 CFR 351.209(b)(3)).
- b. **Incomplete Investigations:** If the investigation was not completed, the DOC will resume the investigation as if an affirmative preliminary determination was made on the date of publication of the notice of cancellation. The DOC will impose provisional measures (suspend liquidation of entries) by instructing the Customs Service to require for each entry of subject merchandise a cash deposit or bond equal to the rates determined in the affirmative preliminary determination (see 19 CFR 351.209(b)(2)).

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- c. Notification: The DOC will notify all parties to the proceeding, the ITC and, if the DOC determines the violation to be intentional, the Commissioner of Customs. The DOC will publish in the FR a notice of "Antidumping Duty Order (Resumption of Antidumping Investigation); Cancellation of Suspension Agreement" (see 19 CFR 351.209(b)(4) and (5)).

2. Determinations After Notice and Comment

If the DOC has reason to believe that a signatory has violated a suspension agreement or that a suspension agreement no longer meets the requirements of section 734(d) of the Act but does not have sufficient information to determine that a signatory has violated the suspension agreement as discussed in item 1 above, the DOC will take the following steps:

- a. Publication: The DOC will publish a FR notice of "Invitation for Comment on Antidumping Suspension Agreement" (see 19 CFR 351.209(c)(1)).
- b. Types of determinations:
  - i. Exporter Violations: If the DOC determines that, based on comments received, any signatory has violated the agreement, the DOC will follow the procedure outlined in item 1a. or 1b. above for completed and incomplete investigations, respectively (see 19 CFR 351.209(c)(3)).
  - ii. Inadequate Agreements: If it is determined that the agreement no longer meets the requirements of section 734(d) of the Act, the DOC will:
    - (a) follow the procedure outlined in item 1a. or 1b. above except that the date shall be the date of first entry, or withdrawal from warehouse, for consumption on or after the later of 90 days before the date of publication of the notice of suspension of liquidation or the date of

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first entry or withdrawal from warehouse the sale or export of which does not meet the requirements of section 734(d) of the Act (see 19 CFR 351.209(c)(4)(i));

(b) for an agreement to eliminate sales at less than fair value or to cease exports, continue the suspension of the investigation by accepting a revised suspension agreement which meets the applicable requirements of section 734(d) of the Act and publish a FR notice of "Revision of Agreement Suspending Antidumping Investigation" (see 19 CFR 351.209(c)(4)(ii)) or;

(c) for an agreement to eliminate injurious effect or an NME agreement, continue the suspension of liquidation and publish an FR notice as described in item (ii)(b). above, investigation or, order the suspension of liquidation until the ITC completes any requested review of the agreement as described in item F above (see 19 CFR 351.209(c)(4)(iii)).

- c. Additional Signatories: If the DOC decides that a suspension agreement no longer will completely eliminate the injurious effects of exports under section 734(c)(1), or that the signatory exporters no longer account for substantially all of the subject merchandise, the DOC may revise the agreement to include additional signatory exporters in accordance with 19 CFR 351.209(d).

## **H. Other Suspension Agreement Activities**

### **1. ITC Review of "Injurious Effect" Suspension Agreements**

See section 734(h) of the Act. Under this section, the ITC, upon receiving a request within 20 days after the suspension agreement, will review the "injurious effects" provision of these types of agreements.

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2. ITC Regional Industry Determinations

See Section 734(m) of the Act. Under this section, if the ITC makes a regional industry determination, exporters to the region can request the opportunity to enter into a suspension agreement.